

Senate Engrossed

FILED

KEN BENNETT

SECRETARY OF STATE

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SENATE RESOLUTION 1001

A RESOLUTION

RESOLVING INTENT TO AFFIRM THE SOVEREIGNTY OF THE STATE OF ARIZONA UNDER THE TENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND TO OPPOSE THE CREATION OF A NEW INDIAN RESERVATION FOR GAMING PURPOSES WITHIN THE EXTERIOR BOUNDARIES OF A MUNICIPALITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Whereas, the Tenth Amendment to the Constitution of the United States
2 reads as follows: "The powers not delegated to the United States by the
3 Constitution, nor prohibited by it to the States, are reserved to the States
4 respectively, or to the people"; and

5 Whereas, the United States Constitution expressly enumerates the
6 limited authority delegated to federal government by the several states; and

7 Whereas, the State of Arizona retains rights and authority not
8 expressly delegated to the federal government by the Constitution, including
9 and specifically the right to maintain full governmental authority over its
10 territory unless this legislative body grants the federal government leave to
11 diminish that territorial authority; and

12 Whereas, with respect to Indian gaming, this State has specifically
13 reserved its rights by statute; and

14 Whereas, in addition to the reserved powers of the state, the federal
15 government has expressly granted to the states authority to regulate commerce
16 with the tribes related to Indian gaming in Class III gaming facilities by
17 requiring that the states and tribes enter into gaming compacts; and

18 Whereas, the Tohono O'odham Nation has filed an application with the
19 federal government to create a reservation for the purposes of building an
20 expansive gaming facility within the exterior borders and neighborhoods of
21 the City of Glendale; and

22 Whereas, the Tohono O'odham Nation claims rights to establish its
23 reservation under a federal statute that fails to recognize or accommodate
24 the state's constitutional authority and, therefore, exceeds the authority
25 delegated to the federal government by the states; and

26 Whereas, the Tohono O'odham Nation has amended its initial application
27 under the federal statute to create a reservation by removing its request for
28 authority to conduct gaming on the property notwithstanding the fact that the
29 Nation has consistently stated its intention to conduct gaming activity on
30 the location in contravention of federal and state law. The federal
31 government, in addition to exceeding its constitutional authority, has
32 wrongfully accepted that amendment and thus failed to incorporate the
33 Nation's expressly stated intentions when making its decision to create a new
34 reservation; and

35 Whereas, the federal government, in addition to exceeding its
36 constitutional authority, incorrectly bases its decision on an interpretation
37 that the land that it seeks to remove from state jurisdiction is not, as
38 required by the federal statute on which the Tohono O'odham Nation relies,
39 "within a city or town," as that term would be reasonably interpreted in the
40 context of Arizona statutes given that the land in question is a county
41 island in the middle of a developed metropolitan area and is completely
42 surrounded by the City of Glendale; and

43 Whereas, the Tohono O'odham Nation's proposed gaming facility is
44 located within a developing community, across the street from a high school,
45 and people residing or conducting business in this community did not

1 anticipate or have any reason to anticipate that their lives and livelihoods
2 would be impacted by the creation of an area and a business enterprise that
3 is not subject to the laws and regulations of this State or its local
4 governmental jurisdictions; and

5 Whereas, the voters of Arizona, with the public encouragement of the
6 Tohono O'odham Nation, approved a ballot measure in 2002 that created laws
7 expressly intended to preclude the development of a gaming facility in or
8 close to neighborhoods, which is directly inconsistent with the Nation's
9 current proposal; and

10 Whereas, six other Arizona tribes have passed resolutions expressly
11 opposing the Tohono O'odham Nation proposal.

12 Therefore

13 Be it resolved by the Senate of the State of Arizona:

14 1. That the Senate of the State of Arizona hereby expresses its intent
15 to protect its sovereignty by preserving the rights not specifically
16 enumerated and granted to the federal government in accordance with the Tenth
17 Amendment of the Constitution of the United States.

18 2. That this body opposes as a matter of law and just public policy
19 the Tohono O'odham Nation's pending application to create a reservation
20 within the exterior boundaries of the City of Glendale.

21 3. That the term "within a city or town," as used in the federal
22 statute on which the Tohono O'odham Nation relies in its attempt to create a
23 new Indian reservation for the purposes of gaming, consistent with the
24 Arizona statute and the evolution of annexation statutes with this state,
25 would include any territory that is surrounded on three sides by a city or
26 town.

27 4. That this Resolution shall serve as notice to the federal
28 government that it must deny, in accordance with the constitutional
29 limitation on federal authority, the Tohono O'odham Nation's application for
30 the creation of a new reservation within the State of Arizona without prior
31 legislative approval as required by Article I of the United States
32 Constitution.

33 5. That this body accepts the order of the Arizona Federal District
34 Court in the matter of *Gila River Indian Community, et al. v. The United*
35 *States of America, et al.*, Case No. CV10-1993-PHX DGC, allowing members to
36 join as parties in that lawsuit opposing the actions of the federal
37 government to impede on the sovereignty of this state by creating a new
38 reservation within the State of Arizona without prior legislative approval.

39 6. That the Secretary of State of the State of Arizona transmit copies
40 of this Resolution to the President of the United States, the President of
41 the United States Senate, the Speaker of the United States House of
42 Representatives, the Speaker of the House and the President of the Senate of
43 each state's legislature and each Member of Congress from the State of
44 Arizona.

~~PASSED BY THE SENATE JANUARY 27, 2011.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE JANUARY 27, 2011.~~